

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MFB FERTILITY INC.,

Plaintiff,

v.

ACTION CARE MOBILE VETERINARY
CLINIC, LLC,

Defendant.

Case No. 1:23-cv-03854

Judge Harry D. Leinenweber
Magistrate-Judge Gabriel A. Fuentes

AMENDED COMPLAINT

Plaintiff MFB Fertility Inc. (“Plaintiff” or “MFB Fertility”) by and through its counsel, brings this action for Copyright and Trademark Infringement against Defendant, Action Care Mobile Veterinary Clinic, LLC (“Defendant” or “Action Care”).

NATURE OF THE CASE

1. This is an action for copyright and trademark infringement.
2. Plaintiff, MFB Fertility Inc. researches, develops, and sells in-home tests for fertility tracking purposes.
3. MFB’s in-home fertility tests (the “MFB products”) are offered for sale in the United States under the brand name and United States registered trademark PROOV®.
4. The MFB products measure the presence of progesterone metabolites in urine. Progesterone is a hormone produced in the ovaries after ovulation has occurred. The MFB products allow couples to better monitor their fertility at home.
5. The MFB products were the first at home ovulation confirmation test to obtain clearance by the United States Food and Drug Administration.

6. The MFB products have been utilized by tens of thousands of women across the United States to assist with ovulation confirmation.

7. Defendant, Action Care, is an online retailer that sells progesterone test strips called “OVUPROOF” under the trade name “Action Care Wellness.”

8. Without authorization from MFB, Action Care copied and published on Action Care’s website and its Amazon product listing page, substantial portions of copyrighted materials owned exclusively by MFB.

9. MFB’s promotion, offer for sale and sale of progesterone products under the name OVUPROOF is further likely to cause confusion, mistake, and deception with MFB’s PROOV mark among a substantial segment of potential purchasers and thus constitutes a violation of MFB’s trademark rights.

10. Action Care’s unlawful conduct constitutes trademark and copyright infringement.

11. This Complaint seeks equitable and legal relief from Action Care for its blatant and willful infringement of MFB Fertility’s copyrights and trademarks.

PARTIES

12. MFB is a corporation incorporated in Colorado with a principal place of business in Boulder, Colorado.

13. Action Care is a Maryland limited liability company and an online retailer specializing in the sale of Action Care PdG ovulation test strips under the trade name Action Care Wellness. The Action Care Wellness trade name was registered on December 5, 2022.

JURISDICTION AND VENUE

14. This Court has jurisdiction over the subject matter of this action pursuant to the Copyright Act of 1976, as amended, 17 U.S.C. § 101, *et seq* and the Trademark Act of 1946, 15 U.S.C. §§ 1051, *et seq.* (the “Lanham Act”). This Court has original jurisdiction over this action

under 17 U.S.C. § 501 and 28 U.S.C. §§ 1331, 1332 and 1338(a) and (b), and 15 U.S.C. § 1121 and other applicable statutes as the claims arise from the Lanham Act.

15. This Court also has diversity subject matter jurisdiction under 28 U.S.C. § 1332 because Plaintiff resides in Colorado, Defendant is a Maryland corporation, and the amount in controversy exceeds \$75,000.

16. To the extent Plaintiff's claims arise from Illinois statutory and/or common law, this Court has proper ancillary jurisdiction and supplemental jurisdiction in accordance with 28 U.S.C. § 1367(a) in that the state law claims have a logical relationship to the aggregate core of operative facts relating to Plaintiff's claims under the Lanham Act. The state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative fact.

17. This Court has personal jurisdiction over Action Care because Action Care does and transacts business in this District, and Action Care's infringing products have been promoted, distributed, offered for sale, and sold within this District.

18. Defendant conducts business through its website <https://buyovuproof.com/> and through Amazon.com. Defendant's products are available for purchase through its website and through Amazon.com, including to Illinois residents of this judicial district.

19. Defendant has known of Plaintiff's intellectual property rights and continues to use Plaintiff's trademark and copyrights to benefit from the goodwill and reputation of Plaintiff. By doing so, Defendant has intentionally caused harm to Plaintiff in this district.

20. Defendant has directed its misuse and infringement of Plaintiff's copyrights and trademark in the State of Illinois, with knowledge that Plaintiff's injury would occur in the State of Illinois.

21. This Court has personal jurisdiction over Defendant, as Defendant is engaged in copyright infringement and trademark infringement directed at persons and entities residing in, located in or doing business in this district.

22. Defendant has purposefully availed itself of the privilege of conducting business in this judicial district and has established at sufficient minimum contacts with the State of Illinois such that it should reasonably and fairly anticipate being sued in a court in Illinois.

23. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and 1400(a) because Defendant does business in this District and is subject to personal jurisdiction in this District.

24. Defendant is an entity which is transacting business in Illinois and because a substantial part of the events giving rise to the claims occurred, and a substantial portion of the affected interstate trade and commerce described below has been and is being carried out in the Northern District of Illinois.

BACKGROUND OF FACTS

25. Plaintiff MFB researches, develops, and sells in-home tests for fertility tracking purposes.

26. Plaintiff's founder and CEO, Dr. Amy Beckley, is a scientist with a PhD in Pharmacology and is a nationally recognized fertility expert.

27. In 2016, after experiencing her own fertility challenges, Dr. Beckley invented a test that measures the presence of progesterone metabolites in urine and allows women to confirm successful ovulation by tracking progesterone (PdG) levels at home. MFB promotes, offers for sale, and sells products utilizing such tests under the trademark PROOV®.

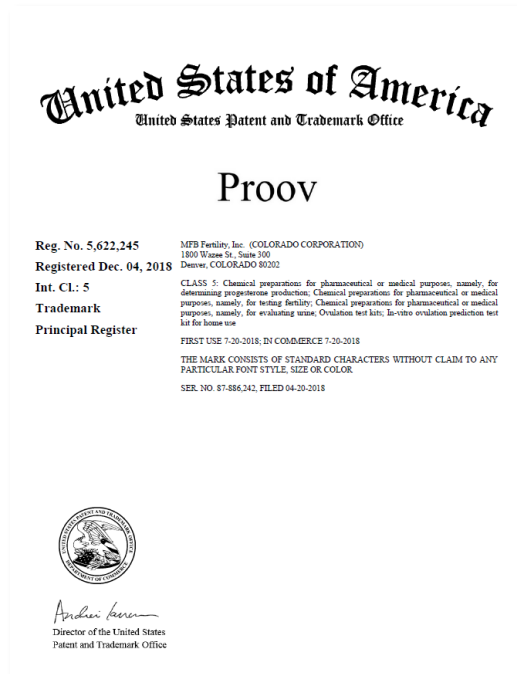
28. Products offered under the PROOV® brands were the first to obtain FDA clearance as an at-home ovulation confirmation test and have been utilized by tens of thousands of women across the United States to assist with ovulation confirmation.

29. PROOV® branded products are particularly concerned with simple practical procedures that can readily be applied by unskilled persons, e.g., in the home, to provide reliable information concerning confirmation of whether or not ovulation has occurred, whether progesterone levels are sufficient to support a pregnancy, and other information relating to or deriving from the presence of progesterone in the body.

30. Since the PROOV® branded products were first introduced to the market, MFB has made significant investments toward marketing and promoting its test products under the PROOV® name and, as a result, PROOV® has become uniquely associated within the in-home ovulation test market as being a source-indicating designation for MFB and its products. Potential purchasers of in-home test products have come to exclusively associate PROOV®-branded products as being synonymous with MFB and genuine MFB goods. Accordingly, MFB has built up considerable goodwill in connection with the PROOV® brand, which has become valuable intellectual property.

MFB'S REGISTERED TRADEMARK

31. United States Federal Trademark Registration No. 5,622,245 for the PROOV® trademark is set forth below:



A true and correct copy of the Registration is attached as Exhibit A.

32. Plaintiff is the exclusive owner of United States Federal Trademark Registration No. 5,622,245 for PROOV.

33. Plaintiff's first use in commerce of the PROOV® was on July 20, 2018.

34. The United States Patent and Trademark office issued registration for the PROOV® trademark on December 4, 2018.

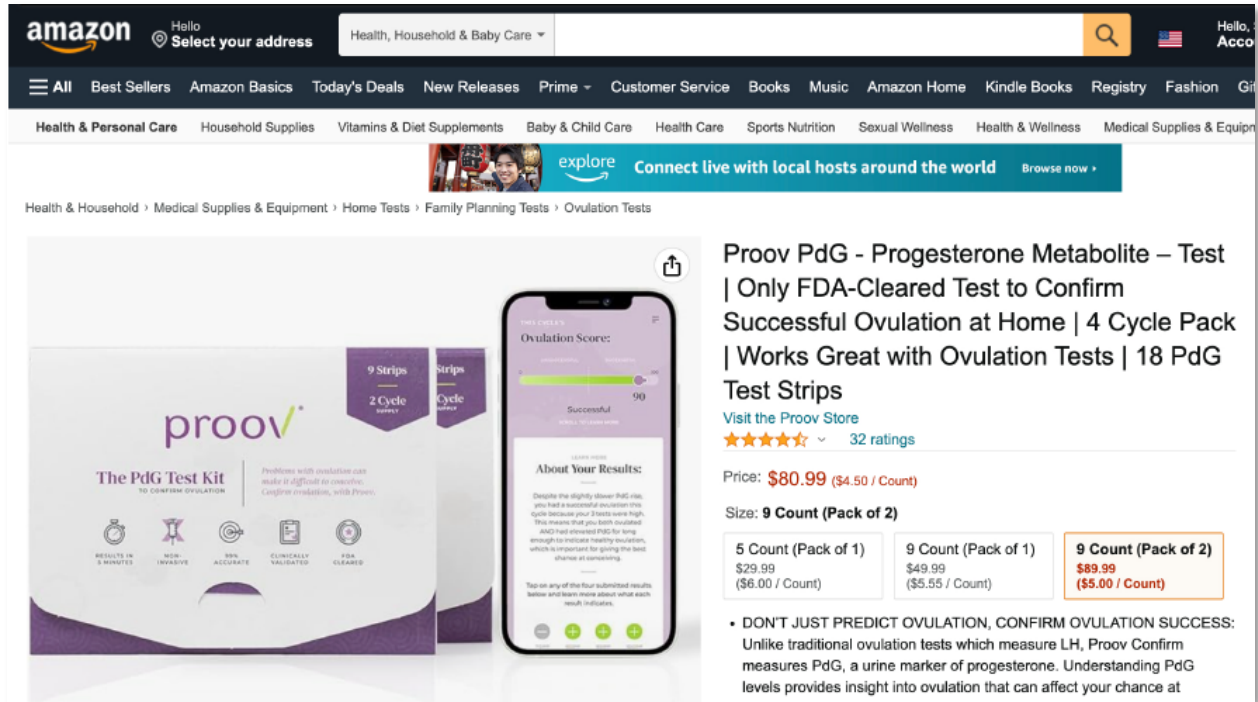
35. Plaintiff owns broad common law rights to the PROOV® trademark as a result of its investment over the years in marketing, advertising and promotion. PROOV® is symbolic of extensive goodwill and customer recognition built-up through its significant expenditures of time and effort by Plaintiff.

36. Over the course of several years, MFB promoted, offered for sale, and sold at-home hormone testing products under the registered trademark "PROOV." PROOV-branded products have become the leading at-home fertility and hormone testing products on the market.

37. Plaintiff maintains a website, <https://proovtest.com/>, where it promotes, advertises, offers for sale, and sells its products. The PROOV® has been prominently displayed in association with Plaintiff's fertility products:



38. Plaintiff promotes, advertises, offers for sale, and sells its products on Amazon.com under the PROOV® trademark:



(<https://web.archive.org/web/20220720095847/https://www.amazon.com/Proov-PdG-Progesterone-Metabolite-FDA-Cleared/dp/B08B69XD1Z>).

39. The PROOV® trademark has acquired secondary meaning in the relevant market.

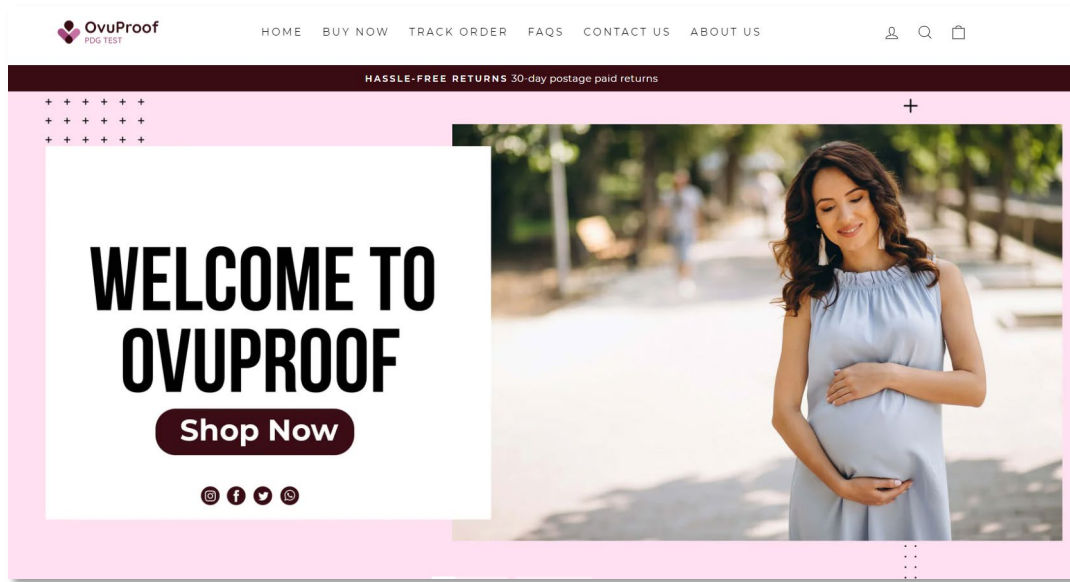
DEFENDANT'S MISUSE OF THE PROOV® TRADEMARK

40. Defendant promotes, advertises, offers for sale, and sells fertility products under the name "OVUPROOF."

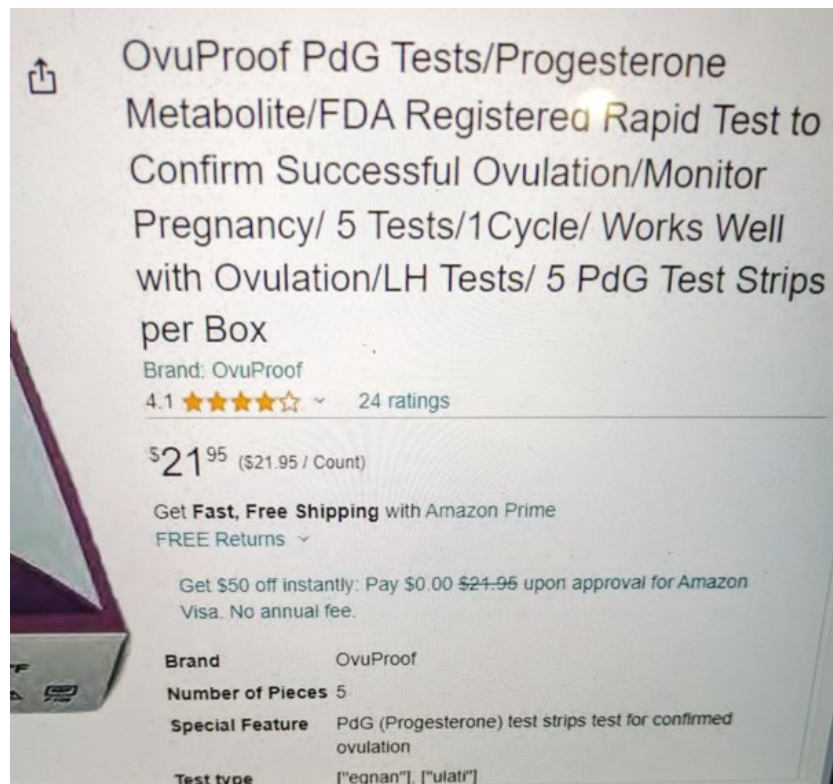


(<https://buyovuproof.com/>).

41. Defendant operates the website <https://buyovuproof.com/>, where it promotes, advertises, offers for sale, and sells fertility products under the name “OVUPROOF”:



42. Defendant promotes, advertises, offers for sale, and sells fertility products under the name “OVUPROOF” on Amazon.com:



43. The name “OvuProof” is confusingly similar to the PROOV® trademark.

44. Use of the term “OvuProof” by Defendant is likely to cause consumer confusion with the PROOV® trademark.

45. Defendant, through use of the name “OvuProof,” has adversely and materially impacted Plaintiff’s sales of Plaintiff’s own products on Plaintiff’s website and on Amazon.com. Additionally, Defendant’s actions have impacted the volume of website traffic and associated revenues of Plaintiff.

46. Defendant has made a conscious and concerted effort to pass off its product as being associated with the PROOV® trademark.

47. Defendant competes with Plaintiff using the name OVUPROOF.

48. The products offered for sale and sold by Defendant travel through the same or similar trade channels and are marketed to the same or similar types of consumers as the products sold by Plaintiff.

49. Defendant’s actions amount to the willful theft of the PROOV® trademark.

MFB’S REGISTERED COPYRIGHT

50. Plaintiff owns all right, title and interest in the United States Copyright Certificate of Registration for the work “Proov Marketplace,” Registration No. TX 9-332-600, (also known as the “Proov Amazon Ad”) effective November 09, 2023, and has standing to sue for enforcement of that copyright. A copy of the unofficial certificate preview for Registration No. TX 9-332-600 is attached as Exhibit B.

51. Plaintiff’s Copyrighted Material under Registration No. TX 9-332-600 (Plaintiff’s “Copyrighted Material”) is an original work of authorship in the form of a compilation comprising text, photographs, and artwork fixed in a tangible medium.

Proov PdG - Progesterone Metabolite – Test | Only FDA-Cleared Test to Confirm Successful Ovulation at Home | 4 Cycle Pack | Works Great with Ovulation Tests | 18 PdG Test Strips

- **DON'T JUST PREDICT OVULATION, CONFIRM OVULATION SUCCESS:** Unlike traditional ovulation tests which measure LH, Proov Confirm measures PdG, a urine marker of progesterone. Understanding PdG levels provides insight into ovulation that can affect your chance at successful pregnancy — a key piece of the puzzle when you're trying to conceive.
- **WORKS WITH THE FREE PROOV INSIGHT APP:** Take your knowledge further and get lab-level numeric results at home in minutes, including your Proov-exclusive Ovulation Quality Score. You'll also get details on what your results mean and action plans to help you meet your goals.
- **THE ONLY FDA-CLEARED PdG TEST:** No other brand can test PdG (a urine marker of progesterone) to Proov's standard, thanks to our patented, Proov-exclusive protocol.
- **WORKS ALONGSIDE OVULATION TESTS (OPKs) AND PREGNANCY TESTS:** Use OPKs to understand your fertile window (the best time to "try"), and a pregnancy test at the end of your cycle to check for pregnancy. Proov Confirm fills the gap between the two, confirming if your ovulation set the stage for an optimum chance at success.
- **1:1 SUPPORT INCLUDED WITH EVERY PURCHASE:** We're here to help you reach your fertility goals faster. Join our community and connect with fertility hormone experts by following our social media or just calling us at 1-877-PROOVIT.

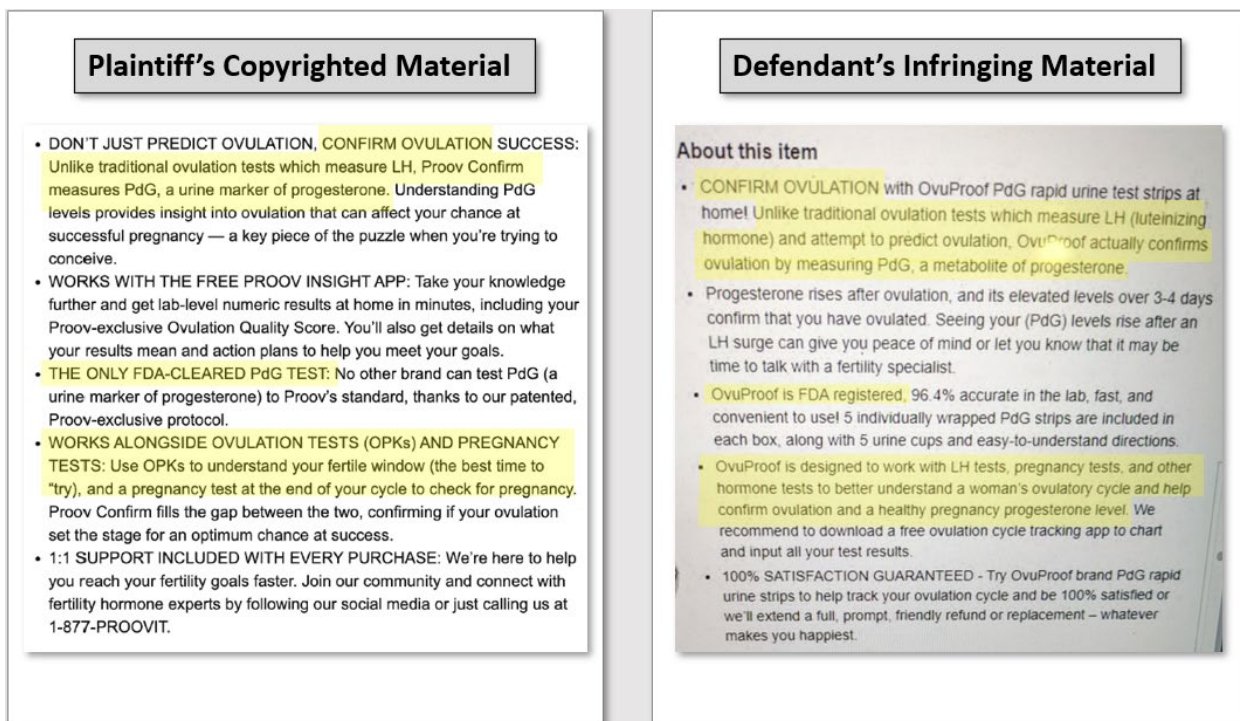
Attached as Exhibit C is a copy of the Copyrighted Material submitted to the Copyright Office.

52. In an effort to maximize its profits, minimize its overhead expenses, and trade off the goodwill of Plaintiff's PROOV registered copyrights and trademark, Defendant copied Plaintiff's Copyrighted Material.

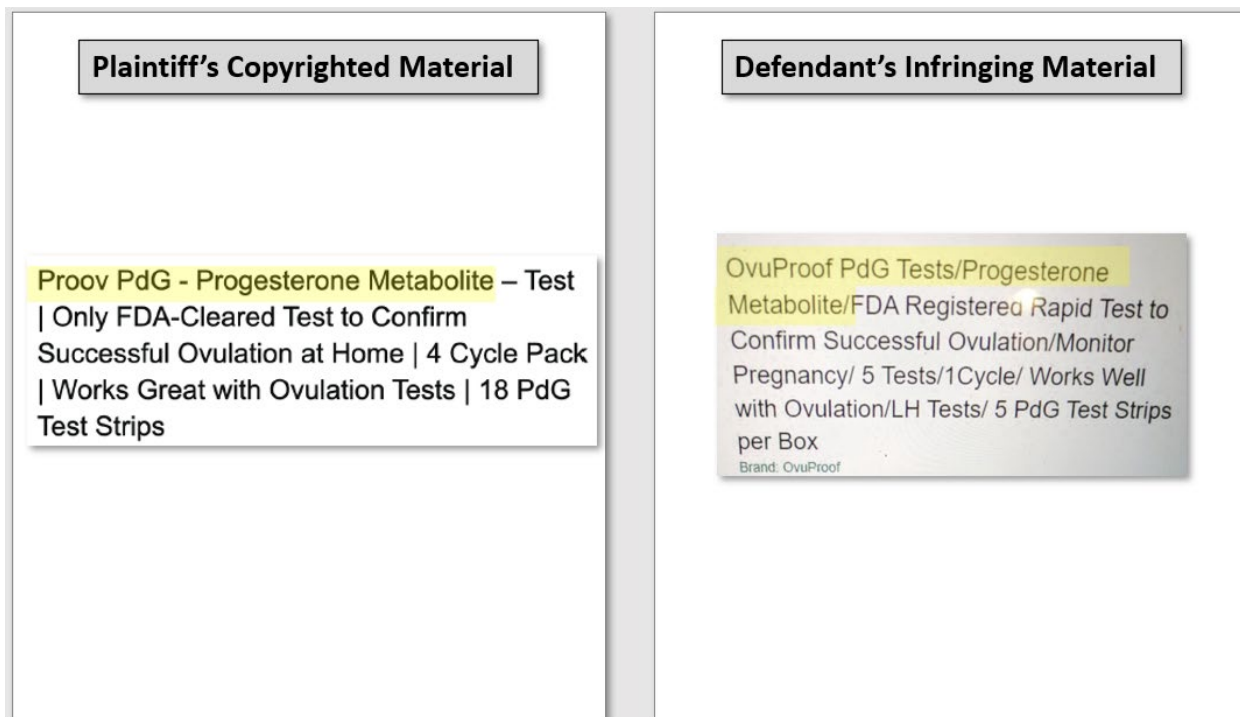
53. Defendant has promoted, advertised, offered for sale, and sold products using product advertisements and product descriptions that are substantially similar to Plaintiff's Registered copyright.

54. Defendant has copied Plaintiff's Copyrighted Material. As can be seen below, Defendant's product advertisement and product description under the "OvuProof" name uses a combination and sequence of descriptions and phrases that are substantially similar to Plaintiff's Copyrighted Material:

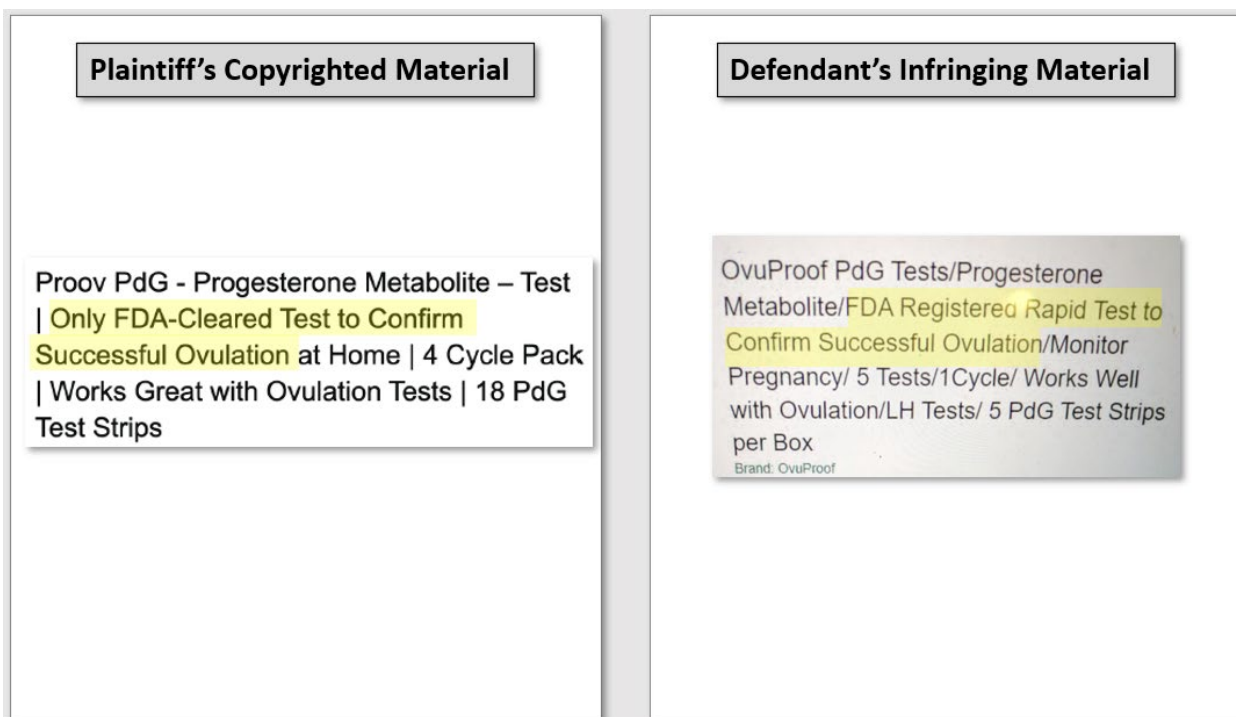




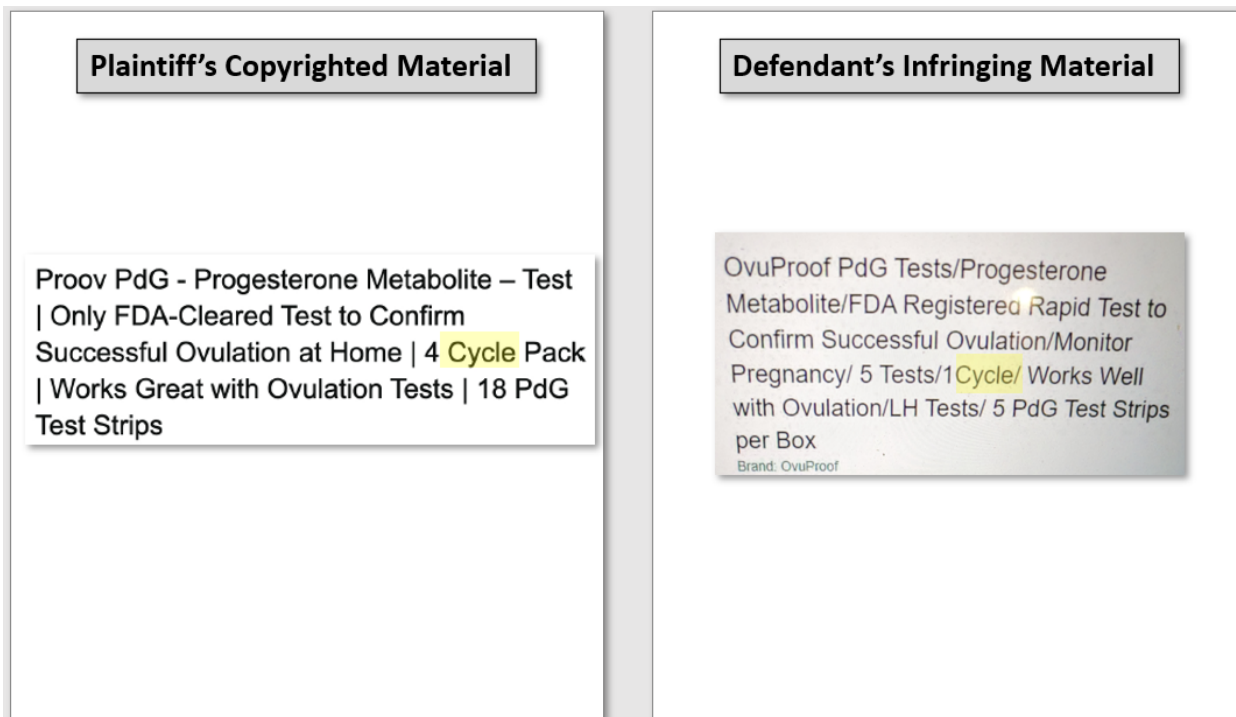
55. The phrase “Proov PDG – Progesterone Metabolite” is substantially similar to the phrase “OvuProof PDG Tests/Progesterone Metabolite,” and each term is used in the first of five key points in their respective works:



56. The phrase “FDA-Cleared Test to Confirm Successful Ovulation” is substantially similar to the phrase “FDA Registered Rapid Test to Confirm Successful Ovulation.”



57. The term “Cycle” is identical to the term “Cycle.”



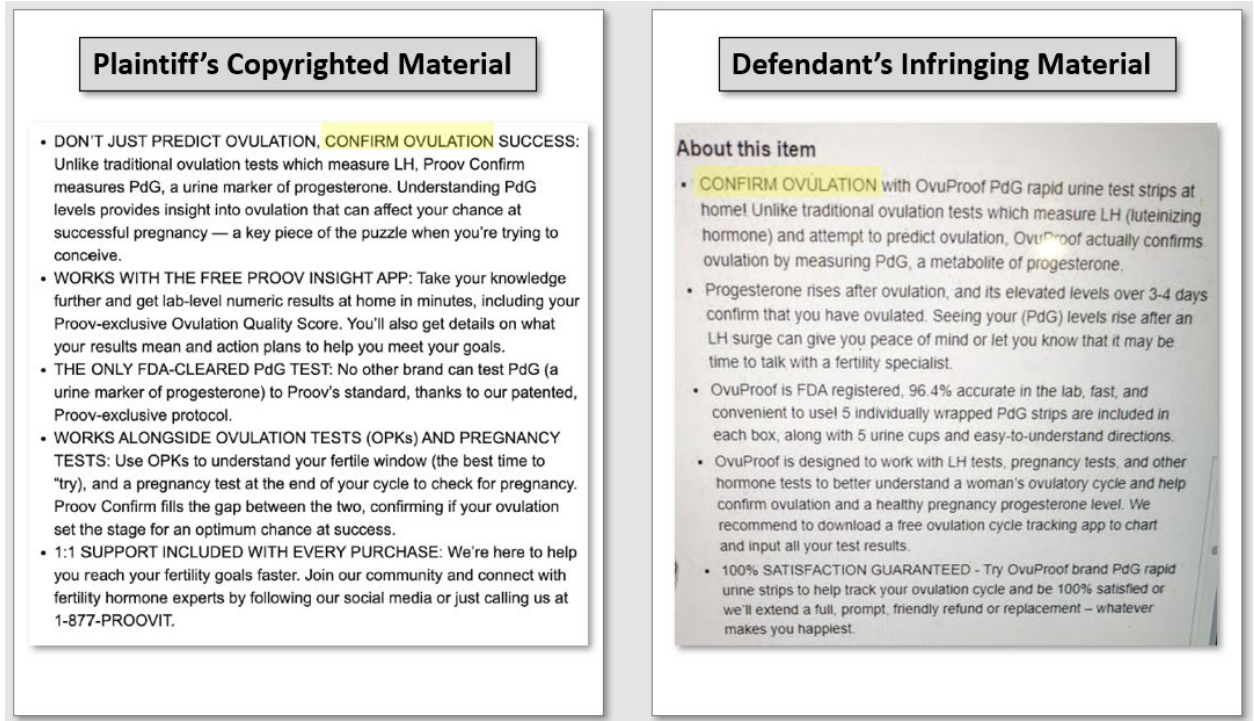
58. The phrase “Works Great with Tests” is substantially similar to the phrase “Works Well with Ovulation/LH Tests.”

Plaintiff's Copyrighted Material	Defendant's Infringing Material
Proov PdG - Progesterone Metabolite – Test Only FDA-Cleared Test to Confirm Successful Ovulation at Home 4 Cycle Pack Works Great with Ovulation Tests 18 PdG Test Strips	OvuProof PdG Tests/Progesterone Metabolite/FDA Registered Rapid Test to Confirm Successful Ovulation/Monitor Pregnancy/ 5 Tests/1Cycle/ Works Well with Ovulation/LH Tests/ 5 PdG Test Strips per Box Brand: OvuProof

59. The term “PdG Test Strips” is identical to the term “PdG Test Strips.”

Plaintiff's Copyrighted Material	Defendant's Infringing Material
Proov PdG - Progesterone Metabolite – Test Only FDA-Cleared Test to Confirm Successful Ovulation at Home 4 Cycle Pack Works Great with Ovulation Tests 18 PdG Test Strips	OvuProof PdG Tests/Progesterone Metabolite/FDA Registered Rapid Test to Confirm Successful Ovulation/Monitor Pregnancy/ 5 Tests/1Cycle/ Works Well with Ovulation/LH Tests/ 5 PdG Test Strips per Box Brand: OvuProof

60. The term “CONFIRM OVULATION” is identical to the term “CONFIRM OVULATION,” and both are used in the first paragraphs of their respective works as a way to distinguish from predicting ovulation.



61. The phrases “Unlike traditional ovulation tests which measure LH, Proov Confirm measures PdG, a urine marker of progesterone” is substantially similar to the phrase “Unlike traditional ovulation tests which measure LH (luteinizing hormone) and attempt to predict ovulation, Ovuproof actually confirms ovulation by measuring PdG, a metabolite of progesterone.” Both phrases are used in the first paragraphs of the respective works:

Plaintiff's Copyrighted Material

- **DON'T JUST PREDICT OVULATION, CONFIRM OVULATION SUCCESS:** Unlike traditional ovulation tests which measure LH, Proov Confirm measures PdG, a urine marker of progesterone. Understanding PdG levels provides insight into ovulation that can affect your chance at successful pregnancy — a key piece of the puzzle when you're trying to conceive.
- **WORKS WITH THE FREE PROOV INSIGHT APP:** Take your knowledge further and get lab-level numeric results at home in minutes, including your Proov-exclusive Ovulation Quality Score. You'll also get details on what your results mean and action plans to help you meet your goals.
- **THE ONLY FDA-CLEARED PdG TEST:** No other brand can test PdG (a urine marker of progesterone) to Proov's standard, thanks to our patented, Proov-exclusive protocol.
- **WORKS ALONGSIDE OVULATION TESTS (OPKs) AND PREGNANCY TESTS:** Use OPKs to understand your fertile window (the best time to "try"), and a pregnancy test at the end of your cycle to check for pregnancy. Proov Confirm fills the gap between the two, confirming if your ovulation set the stage for an optimum chance at success.
- **1:1 SUPPORT INCLUDED WITH EVERY PURCHASE:** We're here to help you reach your fertility goals faster. Join our community and connect with fertility hormone experts by following our social media or just calling us at 1-877-PROOVIT.

Defendant's Infringing Material**About this item**

- **CONFIRM OVULATION** with OvuProof PdG rapid urine test strips at home! Unlike traditional ovulation tests which measure LH (luteinizing hormone) and attempt to predict ovulation, OvuProof actually confirms ovulation by measuring PdG, a metabolite of progesterone.
- Progesterone rises after ovulation, and its elevated levels over 3-4 days confirm that you have ovulated. Seeing your (PdG) levels rise after an LH surge can give you peace of mind or let you know that it may be time to talk with a fertility specialist.
- OvuProof is FDA registered, 96.4% accurate in the lab, fast, and convenient to use! 5 individually wrapped PdG strips are included in each box, along with 5 urine cups and easy-to-understand directions.
- OvuProof is designed to work with LH tests, pregnancy tests, and other hormone tests to better understand a woman's ovulatory cycle and help confirm ovulation and a healthy pregnancy progesterone level. We recommend to download a free ovulation cycle tracking app to chart and input all your test results.
- **100% SATISFACTION GUARANTEED** - Try OvuProof brand PdG rapid urine strips to help track your ovulation cycle and be 100% satisfied or we'll extend a full, prompt, friendly refund or replacement – whatever makes you happiest.

62. The phrases “THE ONLY FDA-CLEARED PdG Test” is substantially similar to the phrase “OvuProof is FDA registered,” and each work includes that point in the third paragraph of their respective works:

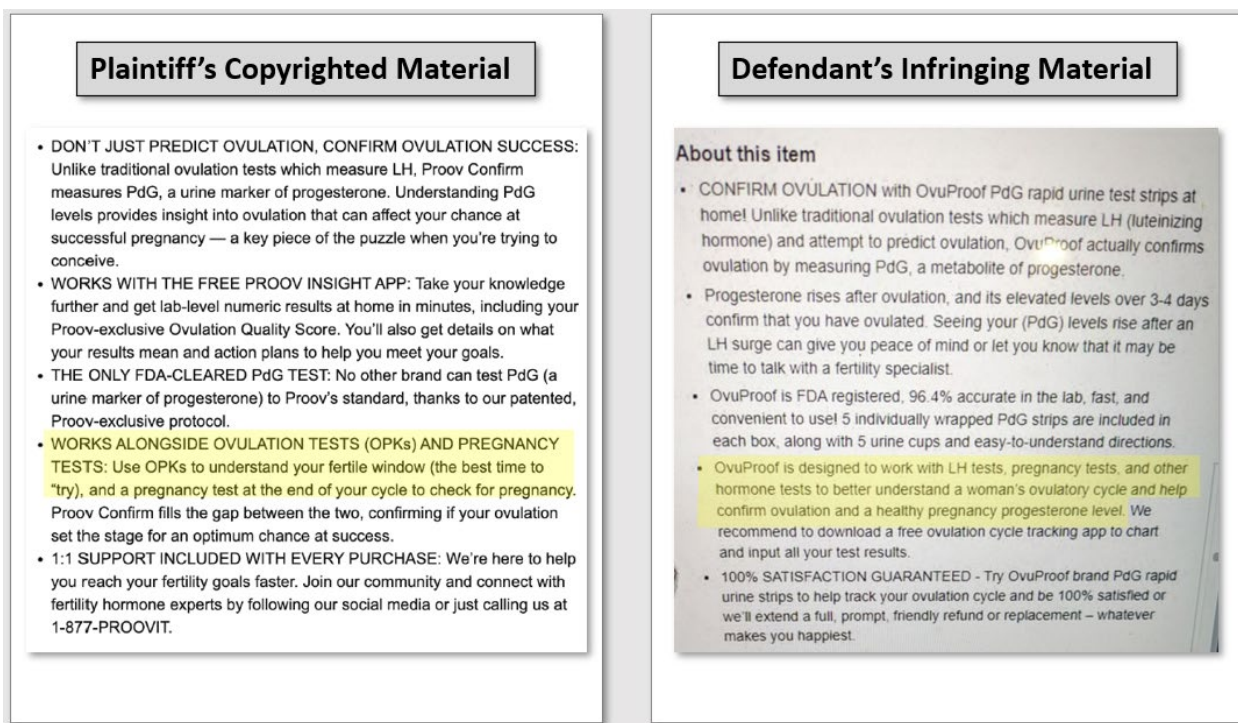
Plaintiff's Copyrighted Material

- **DON'T JUST PREDICT OVULATION, CONFIRM OVULATION SUCCESS:** Unlike traditional ovulation tests which measure LH, Proov Confirm measures PdG, a urine marker of progesterone. Understanding PdG levels provides insight into ovulation that can affect your chance at successful pregnancy — a key piece of the puzzle when you're trying to conceive.
- **WORKS WITH THE FREE PROOV INSIGHT APP:** Take your knowledge further and get lab-level numeric results at home in minutes, including your Proov-exclusive Ovulation Quality Score. You'll also get details on what your results mean and action plans to help you meet your goals.
- **THE ONLY FDA-CLEARED PdG TEST:** No other brand can test PdG (a urine marker of progesterone) to Proov's standard, thanks to our patented, Proov-exclusive protocol.
- **WORKS ALONGSIDE OVULATION TESTS (OPKs) AND PREGNANCY TESTS:** Use OPKs to understand your fertile window (the best time to "try"), and a pregnancy test at the end of your cycle to check for pregnancy. Proov Confirm fills the gap between the two, confirming if your ovulation set the stage for an optimum chance at success.
- **1:1 SUPPORT INCLUDED WITH EVERY PURCHASE:** We're here to help you reach your fertility goals faster. Join our community and connect with fertility hormone experts by following our social media or just calling us at 1-877-PROOVIT.

Defendant's Infringing Material**About this item**

- **CONFIRM OVULATION** with OvuProof PdG rapid urine test strips at home! Unlike traditional ovulation tests which measure LH (luteinizing hormone) and attempt to predict ovulation, OvuProof actually confirms ovulation by measuring PdG, a metabolite of progesterone.
- Progesterone rises after ovulation, and its elevated levels over 3-4 days confirm that you have ovulated. Seeing your (PdG) levels rise after an LH surge can give you peace of mind or let you know that it may be time to talk with a fertility specialist.
- **OvuProof is FDA registered,** 96.4% accurate in the lab, fast, and convenient to use! 5 individually wrapped PdG strips are included in each box, along with 5 urine cups and easy-to-understand directions.
- OvuProof is designed to work with LH tests, pregnancy tests, and other hormone tests to better understand a woman's ovulatory cycle and help confirm ovulation and a healthy pregnancy progesterone level. We recommend to download a free ovulation cycle tracking app to chart and input all your test results.
- **100% SATISFACTION GUARANTEED** - Try OvuProof brand PdG rapid urine strips to help track your ovulation cycle and be 100% satisfied or we'll extend a full, prompt, friendly refund or replacement – whatever makes you happiest.

63. The terms “WORKS ALONGSIDE OVULATION TESTS (OPKs) AND PREGNANCY TESTS: Use OPKs to understand your fertile window (the best time to “try”), and a pregnancy test at the end of your cycle to check for pregnancy” is substantially similar to the phrase “OvuProff is designed to work with LH tests, pregnancy tests, and other hormone tests to better understand a woman’s ovulatory cycle and help confirm ovulation and a healthy pregnancy progesterone level,” and both are used in the fourth paragraphs of their respective works:



64. When considered in the aggregate, Defendant’s advertisements and product descriptions are substantially similar to Plaintiff’s Copyrighted Material, including the selection and arrangement of points in the advertisements, both in the body of the advertisement and the title.

65. Defendant’s promotion, advertisement, offer for sale, and sale of products using Plaintiff’s copyrighted Material has resulted in damages to Plaintiff and caused Plaintiff irreparable injury.

66. Defendant does not have, nor has it ever sought, Plaintiff's authorization for the promotion, advertisement, offer for sale, and sale of products using Plaintiff's Copyrighted Material.

COUNT I: FEDERAL TRADEMARK INFRINGEMENT

(Lanham Act Section 32(a))

67. Plaintiff incorporates all prior allegations as if set forth fully herein.

68. This Court has jurisdiction over the subject matter of this claim, this being a claim of trademark infringement arising under the Trademark Laws of the United States as codified in 15 U.S.C. § 1051 et seq.

69. Plaintiff owns United States Trademark Registration No. 5,622,245 for the PROOV® trademark.

70. The PROOV® trademark is fanciful and arbitrary and is associated in the mind of the public exclusively with products sold by MFB.

71. Based on Plaintiff's extensive advertising, sales and the wide popularity of the PROOV® mark, the PROOV® trademark has obtained Federal Trademark Registration so that any product and advertisement bearing such trademarks is immediately associated by purchasers and the public as being a product of and affiliated with MFB.

72. Defendant copied or otherwise imitated the PROOV® trademark in connection with selling, distributing and advertising Plaintiff's products.

73. Defendant's activities set forth herein constitute use in commerce of the PROOV® trademark and are likely to cause confusion to consumers.

74. Defendant has used the PROOV® trademark without Plaintiff's consent or authorization. Defendant's use, including the sale and distribution of infringing products in

interstate commerce, has caused actual confusion and is likely to cause confusion and mistake in the minds of the public, leading the public falsely to believe that Defendant's products emanate or originate from Plaintiff, or falsely to believe that Plaintiff has approved, sponsored or otherwise associated itself with Defendant.

75. Defendant has intentionally used the PROOV® trademark in connection with its promotion, advertisement, offer for sale, sale, and distribution of goods associated therewith knowing that such trademark is Plaintiff's exclusive property.

76. Defendant has engaged in activities involving the PROOV® trademark with the intent to confuse and deceive consumers into believing that Defendant, and the goods it sells, are in some way sponsored by, or affiliated with or associated with Plaintiff or its products.

77. Defendant's unauthorized use of the PROOV® trademark as set forth herein has resulted in Defendant unfairly benefiting from Plaintiff's advertising and promotion, and profiting from Plaintiff's reputation and its registered trademarks to the substantial and irreparable injury of the public, Plaintiff, and the PROOV® trademark and the substantial goodwill represented thereby.

78. Defendant's acts constitute trademark infringement in violation of section 32 of the Lanham Act, 15 U.S.C. § 1114.

79. Defendant's acts have caused, and will continue to cause, great and irreparable injury to Plaintiff, and unless such acts are restrained by this Court, Defendant will continue such acts, thereby causing Plaintiff to continue to suffer great and irreparable injury.

80. Plaintiff has no adequate remedy at law and is suffering irreparable harm and damage as a result of the aforesaid acts of Defendant in an amount to be determined at trial.

WHEREFORE, Plaintiff demands judgment against the Defendant as follows:

A. That the Court order that Defendant, its officers, agents, directors, servants, employees, representatives, successors, and assigns and all persons, firms or corporations in active concert or participation with Defendant, be immediately and permanently enjoined from:

(1) directly or indirectly infringing Plaintiff's trademark as described above in any manner including generally, but not limited to, copying, distributing, advertising, selling, and/or offering for sale any merchandise that infringes the PROOV® trademark including without limitation Defendant's products using the "PROOV" name, and specifically distributing, advertising, selling and/or offering for sale unauthorized copies of the PROOV® trademark or any other unauthorized goods that picture, reproduce, or utilize the likenesses of or which copy or bear a substantial similarity to any of Plaintiff's trademarks;

(2) using the PROOV® trademark and trade dress rights or marks confusingly similar thereto;

using the name "OVUPROOF" on or in association with any products; advertising (over the Internet, through catalogs or otherwise), selling, importing, exporting, using, accepting orders for or offering to sell products in conjunction with, or under, the "PROOV" name and appearance; engaging in any conduct that tends falsely to represent that, or is likely to confuse, mislead or deceive purchasers, Defendant's customers and/or members of the public to believe that, the actions of Defendant, the products sold by Defendant or Defendant itself are connected with Plaintiff, are sponsored, approved, or licensed by Plaintiff, or are in some way connected or affiliated with Plaintiff;

causing further confusion with and injury to Plaintiff's reputation, business and the PROOV® trademark and common law trademarks, including Plaintiff's name and likeness or other forms of advertisement and trademarks;

(3) otherwise competing unfairly with Plaintiff in any manner;

(4) diluting and infringing the PROOV® trademark and damaging Plaintiff's goodwill, reputations and businesses.

B. That Plaintiff be awarded damages in an amount sufficient to compensate it for the injuries it has sustained by reason of Defendant's unlawful acts, including Plaintiff's loss of goodwill, loss of past and/or future sales and damages caused by Defendant's acts of trademark and trade dress infringement, common law trademark infringement, unfair competition and trademark dilution, as well as for State common law trademark infringement. That Plaintiff be awarded increased damages based upon the intentional and willful nature of Defendant's trademark infringement of the kind complained of herein. That Plaintiff be awarded all profits received by Defendant from the sale of products identified or advertised through the use of identical or confusingly similar designations of the PROOV® trademark.

C. That the Court issue an order requiring Defendant to pay to Plaintiff such damages as Plaintiff has sustained as a consequence of Defendant's infringement of the PROOV® trademark and unfair competition and to account for all gains, profits, and advantages derived by Defendant from the sale of its infringing merchandise bearing the PROOV® trademark and that the award to Plaintiff be trebled as provided for under 15 U.S.C. § 1117; alternatively, that Plaintiff be awarded statutory damages pursuant to 15 U.S.C. § 1117(c) of up to \$1,000,000 for each trademark that Defendant has willfully counterfeited and infringed.

D. That the Court issue an order that Plaintiff recover the costs of this action together with reasonable attorneys' and investigators' fees and prejudgment interest in accordance with 15 U.S.C. § 1117.

E. That Plaintiff be awarded punitive damages for Defendant's willful and malicious acts of common law unfair competition.

F. That Defendant be ordered to deliver up for destruction all advertisements, circulars, brochures and any other items in its possession, custody or control bearing the PROOV® trademark or any other similar designations.

G. That Defendant be ordered to (a) prepare and send to its customers and the general public corrective statements approved by Plaintiff, correcting all false statements made and all misrepresentations made concerning the PROOV® trademark; (b) to disclaim any association between Defendant and Plaintiff and/or its products; and (c) to recall and make reasonable efforts to obtain the return of any infringing or confusingly similar products from its customers.

H. That judgment be entered in favor of Plaintiff and against Defendant on each claim made in the Complaint.

I. That the Court provide Plaintiff with such other and further relief as it deems just and proper, or that Plaintiff may be entitled to under the law.

COUNT II: COPYRIGHT INFRINGEMENT

81. Plaintiff incorporates all prior allegations as if set forth fully herein.

82. Plaintiff is, and at all material times hereto has been, the owner of the copyrights in the Copyrighted Material and is entitled and authorized to protect itself against copyright infringement, including the enforcement of copyright actions against infringers.

83. Pursuant to 17 U.S.C. § 106, Plaintiff has the exclusive rights to reproduce, publicly display, and distribute the Copyrighted Material.

84. Pursuant to 17 U.S.C. § 106, Plaintiff has the exclusive right to prepare derivative works based upon the Copyrighted Material.

85. Plaintiff owns all right, title and interest in and to United States Copyright Certificate of Registration for Copyright No. TX 9-332-600.

86. Plaintiff had access to the Copyrighted Material depicted in Copyright Registration No. TX 9-332-600.

87. Plaintiff copied the Copyrighted Material depicted in Copyright Registration No. TX 9-332-600. The “Ovupooof” product advertisements and product descriptions used by Defendant in Defendant’s promotion, advertisement, offer for sale, sale of Defendant’s products are strikingly and substantially similar to the Copyright Registration No. TX 9-332-600 entitled “Proov Marketplace” in that the look and feel of Defendant’s infringing material and the Copyrighted Material are substantially similar. Defendant has violated and infringed upon Plaintiff’s Registered Copyright No. TX 9-332-600.

88. Plaintiff became aware that Defendant was promoting, advertising, and offering for sale products using product descriptions and advertisements substantially similar to Plaintiff’s Copyrighted Material.

89. Defendant has infringed and continues to infringe, Plaintiff’s Copyrighted Material by reproducing, publicly displaying, promoting, advertising, and offering for sale products using product descriptions and advertisements substantially similar to Plaintiffs Copyrighted Material without Plaintiff’s authorization.

90. At a minimum, Defendant has acted in reckless disregard of Plaintiff’s copyright interest in Plaintiff’s Copyrighted Material.

91. Plaintiff is entitled to its actual damages, including Defendant’s profits from infringement, in amounts to be proven at trial.

92. Defendant’s conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiff irreparable injury that cannot fully be compensated or measured in money. Plaintiff has no adequate remedy at law. Plaintiff has been irreparably harmed by the infringing acts.

Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to permanent injunctive relief prohibiting infringement of Plaintiff's copyrights and exclusive rights under copyright.

WHEREFORE, Plaintiff demands judgment against the Defendant as follows:

A. A judgment finding that Defendant copied Plaintiff's Copyrighted Material and is liable for copyright infringement in each of the infringing acts;

B. a judgment finding that Defendant, and all those in active concert or participation with it, be permanently enjoined from infringement of Plaintiff's copyrights in the Copyrighted Material pursuant to 17 U.S.C. § 502;

C. a judgment and order for Defendant to account for and turn over to Plaintiff all copies or other articles by which copies of the Copyrighted Material may be reproduced pursuant to 17 U.S.C. § 503;

D. an award of Plaintiff's actual damages, including Defendant's profits, in amounts to be proven at trial;

E. an award of prejudgment and post-judgment interest to provide such other remedies under the copyright laws of the United States and/or as the Court deems reasonable and just; and

F. all other relief the Court deems just and fair.

Respectfully submitted,

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*Attorneys for Plaintiff,
MFB Fertility, Inc.*

EXHIBIT A

EXHIBIT A

United States of America

United States Patent and Trademark Office

Proof

Reg. No. 5,622,245

Registered Dec. 04, 2018

Int. Cl.: 5

Trademark

Principal Register

MFB Fertility, Inc. (COLORADO CORPORATION)
1800 Wazee St., Suite 300
Denver, COLORADO 80202

CLASS 5: Chemical preparations for pharmaceutical or medical purposes, namely, for determining progesterone production; Chemical preparations for pharmaceutical or medical purposes, namely, for testing fertility; Chemical preparations for pharmaceutical or medical purposes, namely, for evaluating urine; Ovulation test kits; In-vitro ovulation prediction test kit for home use

FIRST USE 7-20-2018; IN COMMERCE 7-20-2018

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 87-886,242, FILED 04-20-2018



Andrei Iancu

Director of the United States
Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*

What and When to File:

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.

EXHIBIT B

EXHIBIT B

Registration #: TX0009332600
Service Request #: 1-13159248731

Mail Certificate

Vitale Vickrey Niro Solon & Gasey LLP
Arthur A. Gasey
311 S. Wacker Dr.
Suite 2470
Chicago, IL 60606 United States

Priority: Special Handling

Application Date: November 02, 2023

Correspondent

Organization Name: Vitale Vickrey Niro Solon & Gasey LLP
Name: Arthur A. Gasey
Email: gasey@vvnlaw.com
Address: 311 S. Wacker Dr.
Suite 2470
Chicago, IL 60606 United States

Registration Number

TX 9-332-600

Effective Date of Registration:

November 09, 2023

Registration Decision Date:

November 21, 2023

Title

Title of Work: Proov Marketplace

Completion/Publication

Year of Completion: 2022

Date of 1st Publication: July 22, 2022

Nation of 1st Publication: United States

Author

- Author: MFB Fertility, Inc.
Author Created: text
Work made for hire: Yes
Domiciled in: United States

Copyright Claimant

Copyright Claimant: MFB Fertility, Inc.
1630A 30th Street, Boulder, CO, 80301

Rights and Permissions

Organization Name: Vitale Vickrey Niro Solon & Gasey LLP
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Chicago, il 60606 United States

Certification

Name: Arthur A. Gasey
Date: November 02, 2023

Correspondence: Yes

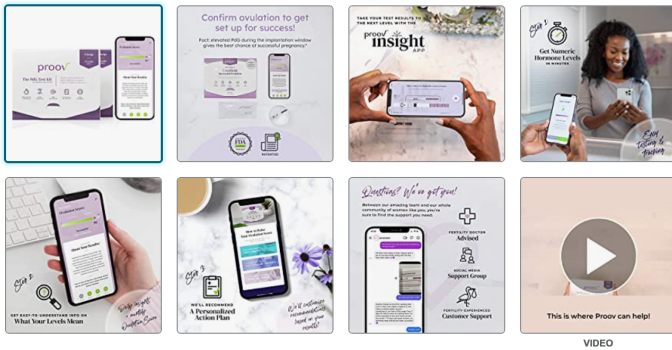
EXHIBIT C

EXHIBIT C

Health & Household › Medical Supplies & Equipment › Home Tests › Family Planning Tests › Ovulation Tests



Roll over image to zoom in



Proov PdG - Progesterone Metabolite – Test | Only FDA-Cleared Test to Confirm Successful Ovulation at Home | 4 Cycle Pack | Works Great with Ovulation Tests | 18 PdG Test Strips

Visit the Proov Store

★★★★★ 32 ratings

Price: **\$80.99** (\$4.50 / Count)

Size: **9 Count (Pack of 2)**

5 Count (Pack of 1) \$29.99 (\$6.00 / Count)	9 Count (Pack of 1) \$49.99 (\$5.55 / Count)	9 Count (Pack of 2) \$89.99 (\$5.00 / Count)
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- **DON'T JUST PREDICT OVULATION, CONFIRM OVULATION SUCCESS:** Unlike traditional ovulation tests which measure LH, Proov Confirm measures PdG, a urine marker of progesterone. Understanding PdG levels provides insight into ovulation that can affect your chance at successful pregnancy — a key piece of the puzzle when you're trying to conceive.
- **WORKS WITH THE FREE PROOV INSIGHT APP:** Take your knowledge further and get lab-level numeric results at home in minutes, including your Proov-exclusive Ovulation Quality Score. You'll also get details on what your results mean and action plans to help you meet your goals.
- **THE ONLY FDA-CLEARED PdG TEST:** No other brand can test PdG (a urine marker of progesterone) to Proov's standard, thanks to our patented, Proov-exclusive protocol.
- **WORKS ALONGSIDE OVULATION TESTS (OPKs) AND PREGNANCY TESTS:** Use OPKs to understand your fertile window (the best time to "try"), and a pregnancy test at the end of your cycle to check for pregnancy. Proov Confirm fills the gap between the two, confirming if your ovulation set the stage for an optimum chance at success.
- **1:1 SUPPORT INCLUDED WITH EVERY PURCHASE:** We're here to help you reach your fertility goals faster. Join our community and connect with fertility hormone experts by following our social media or just calling us at 1-877-PROOVIT.

Additional Details

Small Business
This product is from a small business brand. Support small.
[Learn more](#)

Learn new cuisines with virtual cooking experiences
Amazon Explore [Browse now](#)

Proov Confirm fills the gap between the two, confirming if your ovulation set the stage for an optimum chance at success.

- **1:1 SUPPORT INCLUDED WITH EVERY PURCHASE:** We're here to help you reach your fertility goals faster. Join our community and connect with fertility hormone experts by following our social media or just calling us at 1-877-PROOVIT.

Additional Details

Small Business
This product is from a small business brand. Support small.
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Amazon Explore [Browse now](#)

☐ **One-time purchase:**
\$89.99 (\$5.00 / Count)
FREE delivery: **Tuesday, July 26**
Ships from: Amazon
Sold by: MFB, Inc.

☒ **Subscribe & Save:**
10% / **15%**
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Save 10% now and up to 15% on repeat deliveries.
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• Cancel anytime
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Get it Tuesday, Jul 26

In Stock.

Qty: 1

Deliver every:

2 months (Most common)

Set Up Now

Auto-deliveries sold by MFB, Inc. and Fulfilled by Amazon

Have one to sell?

Sell on Amazon







Frequently bought together



- ☒ **This item:** Proov PdG - Progesterone Metabolite – Test | Only FDA-Cleared Test to Confirm Successful Ovulation at H... **\$89.99** (\$5.00/Count)
☒ Proov Balancing Oil | Balancing Oil to Restore Your Balance | Progesterone, MCT Oil, Vitamin E Oil, Lemon Oil | 1 fluid... **\$39.99** (\$39.99/FI Oz)
☒ Proov PredictTM | Ovulation Test Strips to Predict The Fertile Window | 30 LH Tests and One Proov "P" Cup **\$15.99** (\$15.99/Count)

Customers who viewed this item also viewed

Page 1 of 7

					
Proov Balancing Oil Balancing Oil to Restore Your Balance Progesterone, MCT Oil, Vitamin E Oil, Lemon Oil 1 fluid oz/30mL ★★★★★ 197 1 offer from \$39.99	Proov Predict & ConfirmTM Predict The Fertile Window and Confirm Successful Ovulation with one Dual- Hormone Test kit 15 L... ★★★★★ 162 2 offers from \$39.99	Proov PredictTM Ovulation Test Strips to Predict The Fertile Window 30 LH Tests and One Proov "P" Cup ★★★★★ 56 1 offer from \$15.99	Proov Reserve at-Home Ovarian Reserve Test Non-invasive Testing Results in 10 Minutes 6 Urine FSH Tests ★★★★★ 5 1 offer from \$19.99	Proov Luteal Love, Herbal Supplement to Support Your Body's Natural Progesterone Production, Vitex (Chasteberry),... ★★★★★ 7 1 offer from \$25.99	Premom Quantitative Ovulation Test Strips, Ovulation Predictor Kit with Smart Digital Ovulation Reader APP, Numerical Ovulation... ★★★★★ 636 2 offers from \$12.49

Product Description



High
PdG Levels =
the best nest for an egg*



Confirm Ovulation and Get Set Up for Success

PdG tests check for successful ovulation after peak fertility, during the implantation window, revealing a key piece of the fertility puzzle. Elevated PdG levels have been shown to correlate with an increased chance of successful pregnancy from 19 to 92%.*

proov[®]
Confirm
PDG TEST



*Bernstein, D., Frishman, H. B., Levin, S., & Schwartz, S. (1978). The value of urinary pregnanediol estimation for monitoring early pregnancies. *Fertility and Sterility*, 29(2), 141–143.

Know more with the Proov Insight App, including your Monthly Ovulation Score!



Pee. Dip. Scan. Know.

proov[®]

insight

APP



Ovulation and PdG: What You Need to Know

Egg release is only part of the ovulation story.

When it comes to ovulation, the release of an egg from the ovary is just the beginning. When hormones are in good balance, the uterine lining thickens after ovulation, creating the best conditions for a fertilized egg to implant. We call this "successful ovulation." Proov PdG tests confirm successful ovulation by looking for elevated PdG levels over several days during the critical implantation window.

PdG patterns matter.

Unlike progesterone blood tests that measure just one moment in time, Proov Confirm tests measure PdG (a marker of progesterone detectable in urine) over multiple days to detect patterns a progesterone blood test could miss. These patterns are the secret to understanding ovulation.

You can still ovulate with low PdG.

Even if your Proov results indicated you're light on PdG, it's still possible to ovulate and get pregnant. But there may be steps you can take to increase your chances at success.



Meet Dr. Amy Beckley: The Original Proover

Amy couldn't get the hormone insight she needed when she was trying to conceive — and launched Proov to change that.

Proud to be Doctor Advised

We're proud to work with some of today's most influential experts in the fields of fertility and hormone health. Together, we're bringing the power of hormone insight within reach for women at every stage of life, easily at home.



We've Got You

As a Proover, you'll join a supportive, private community of women sharing this journey, and connect directly with experts who'll know you by name.

Our Purpose & Our Promise

Proov exists to unleash the power of the menstrual cycle and reproductive hormones, inspiring women to live and feel their best. Because, we believe that women are innately powerful. And, with the right data they are unstoppable.

That's why our promise is to provide tools that translate what your hormones are trying to tell you — to put the power of wellness back in your hands.

We'll be here for you every step of the way.



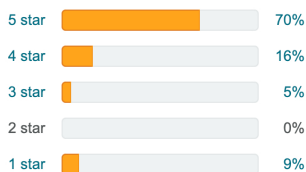
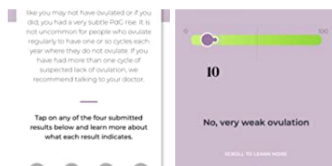
Product details**Package Dimensions** : 8.82 x 6.26 x 2.87 inches; 4.59 Ounces**Date First Available** : June 20, 2020**Manufacturer** : Proov**ASIN** : B08B69XD1Z**Best Sellers Rank**: #15,126 in Health & Household (See Top 100 in Health & Household)#12 in [Ovulation Tests](#)**Customer Reviews:**★★★★☆  32 ratings**Important information****Legal Disclaimer**

Statements regarding dietary supplements have not been evaluated by the FDA and are not intended to diagnose, treat, cure, or prevent any disease or health condition.

Customer questions & answers[See questions and answers >](#)**Customer reviews**

★★★★☆ 4.4 out of 5

32 global ratings

[How customer reviews and ratings work](#)**Reviews with images**[See all customer images](#)Top reviews **Top reviews from the United States** Lily M★★★★★ **Cool data**

Reviewed in the United States on February 4, 2022

Size: 9 Count (Pack of 2) | **Verified Purchase**

I'm a person who likes data and I find these tests to be helpful especially since my period is so irregular. After I Got my first LH peak my pdg was negative. I reached out to proov and they said there was a chance I had a false surge and to continue testing LH to see if I get another. They were right! 2 days later I got my biggest LH surge and 7 days later confirmed I ovulated. Sometimes too much data can become overwhelming, but these are a nice and easy way to get an extra piece to the TTC puzzle.

2 people found this helpful

 |
 TAS★★★★★ **I had disappointing negatives and some strong positives - this does work**

Reviewed in the United States on June 5, 2022


Size: 9 Count (Pack of 2) | **Verified Purchase**

I think when using this it must be kept in your mind that the results are for the day before. So if you get a blood test the next day it does not still prove it is not correct as levels fluctuate. I myself had a disappointing negative, went out and got a blood test and came back with very strong progesterone. When I tested the next day, sure enough the test came back strongly positive as well as it represents the previous days average levels as confirmed by blood tests.

My results were strongly positive because I did have a pregnancy that did not last. I used to monitor progesterone the next week and saw that my results were no longer strong and unfortunately it resulted in a chemical pregnancy. I was thinking the results were wrong but found out they were not when my period came shortly after the sub par testing results.

I have since have had very strong positive results so I have experienced both positives and negatives. There customer service is also extremely helpful and supportive.

Helpful | Report abuse

 Heather Almeda

★★★★★ **Must have for every woman!**

Reviewed in the United States on January 25, 2022

Size: 9 Count (Pack of 2) | **Verified Purchase**

I'm so impressed with Proov PDG strips! I have been TTC for two years with several unexplained pregnancy losses. Thanks to finding Proov PDG strips I was able to identify that I have low progesterone and my doctor proscribed it for me! I was also inspired to make dietary and lifestyle changes and I've been delighted to see my hormone levels become healthier each month. Great tool for women to better understand their cycle and overall reproductive health!

One person found this helpful

Helpful | Report abuse

 Sarah Davenport

★☆☆☆☆ **Doesn't work**

Reviewed in the United States on September 1, 2021

Size: 9 Count (Pack of 2) | **Verified Purchase**

The app and results came up negative and said I didn't ovulate. Yet, here I am 5 weeks pregnant. All it did was give me unnecessary anxiety and wasted my money. I don't feel right selling them to someone else since it didn't work for me.



2 people found this helpful

Helpful | Report abuse

 Gigi

★★★★★ **Must have for all women**